

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

In the matter of:

George and Gloria Soares
Log Haven Dairy

Order No. R5-2014-0565

Administrative Civil Liability
Complaint No. R5-2011-0578

Settlement Agreement and Stipulation
for Entry of Order; Order

Section I: INTRODUCTION

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order ("Stipulated Order" or "Order") is entered into by and between the Assistant Executive Officer of the Regional Water Quality Control Board, Central Valley Region ("Central Valley Water Board"), on behalf of the Central Valley Water Board Prosecution Staff ("Prosecution Staff"), and George and Gloria Soares ("Discharger") (Prosecution Staff and Discharger are collectively, the "Parties") and is presented to the Central Valley Water Board, or its delegee, for adoption as an order by settlement, pursuant to Government Code section 11415.60.

Section II: RECITALS

1. George and Gloria Soares own and operate the Log Haven Dairy, located at 7755 Fargo Avenue, Hanford, California, County of Kings. On 3 May 2007, the Central Valley Water Board issued the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 ("General Order") and the General Order's corresponding Monitoring and Reporting Program. The General Order became effective on 9 May 2007. The Log Haven Dairy is regulated by the General Order, and the General Order names the owners as "the Discharger."

2. On 5 May 2011, the Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint No. R5-2011-0578 ("Complaint") to the Discharger. The Complaint recommended imposing an administrative civil liability totaling \$6,600 for alleged violations of the General Order as detailed in Attachment A. The Discharger waived their right to a 90-day hearing and expressed an interest in engaging in settlement negotiations with the Prosecution Staff and the Complaint was subsequently withdrawn.

3. After issuance of the Complaint, the Discharger submitted the WMP to the Central Valley Water Board on 19 August 2011.

4. The Parties engaged in settlement negotiations and agree to settle the violations cited in the Complaint without administrative or civil litigation and by presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption as an order by settlement pursuant to Government Code section 11415.60. The liability imposed in this Order is less than the liability determined using the penalty methodology in the State Water Board Enforcement Policy, as described in Attachment A. The adjustment is the result of settlement negotiations between the parties and is based on the inherent risks associate with an administrative hearing and potential subsequent litigation. The Prosecution Staff believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violations alleged in Attachment A except as provided in this Stipulated Order and that this Stipulated Order is in the best interest of the public.

Section III: STIPULATIONS

The Parties incorporate Paragraphs 1 through 4 by this reference, as if set forth fully herein, and stipulate to entry of this Order as set forth below, and recommend that the Central Valley Water Board issue this Stipulated Order to effectuate the settlement.

5. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an administrative civil liability totaling \$4,600. Within thirty (30) days of the effective date of this Order, the Discharger agrees to remit, by check, FOUR THOUSAND SIX HUNDRED DOLLARS (\$4,600.00), payable to the *State Water Pollution Cleanup and Abatement Account*, and shall indicate on the check the number of this Order. The Discharger shall send the original signed check to the State Water Resources Control Board, Division of Administrative Services, Accounting Branch at 1001 I Street, 18th Floor [95814], P.O. Box 1888, Sacramento, California, 95812-1888 and a copy of the check to Clay Rodgers, Central Valley Water Board 1685 "E" Street, Fresno, California 93706-2007.

6. **Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in the Complaint may subject it to further enforcement, including additional administrative civil liability.

7. **Party Contacts for Communications related to Stipulated Order:**

For the Central Valley Water Board:

Clay Rodgers
Regional Water Quality Control Board
Central Valley Region

1685 "E" Street
Fresno, CA 93706-2007

For the Discharger:

George and Gloria Soares
[REDACTED]
Sacramento, CA 95831

8. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

9. **Matters Addressed by Stipulation:** Upon the Central Valley Water Board's adoption of this Stipulated Order, this Order represents a final and binding resolution and settlement of the violations alleged in the Complaint, and all claims, violations or causes of action that could have been asserted against the Discharger as of the effective date of this Stipulated Order based on the specific facts alleged in the Complaint or this Order ("Covered Matters"). The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability, in accordance with Paragraph 5 of this Order.

10. **Public Notice:** The Discharger understands that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the Central Valley Water Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption, the Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Central Valley Water Board, or its delegee. The Discharger agrees that they may not rescind or otherwise withdraw their approval of this proposed Stipulated Order.

11. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the Central Valley Water Board's adoption of the settlement by the Parties and review by the public, as reflected in this Stipulated Order, will be adequate. In the event procedural objections are raised prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

12. **No Waiver of Right to Enforce:** The failure of the Prosecution Staff or Central Valley Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of the Order. The failure of the Prosecution Staff or Central Valley Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order.

13. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.

14. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Central Valley Water Board.

15. **If Order Does Not Take Effect:** In the event that this Stipulated Order does not take effect because it is not approved by the Central Valley Water Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Central Valley Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. Notwithstanding objections on the admissibility of settlement discussions as evidence in a hearing, the Parties agree to waive any and all objections related to their efforts to settle this matter including, but not limited to:

- a. Objections related to prejudice or bias of any of the Central Valley Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Central Valley Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Complaint in this matter; or
- b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

16. **Admission of Liability:** The Parties agree that this is a settlement of a dispute. The Discharger does not admit to liability of the violations alleged herein; however, the Discharger recognizes that this Order may be used as evidence of a prior enforcement action consistent with California Water Code (Water Code) section 13327.

17. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323(b), and hereby waive their right to a hearing before the Central Valley Water Board prior to the adoption of the Stipulated Order.

18. **Waiver of Right to Petition:** The Discharger hereby waives their right to petition the Central Valley Water Board's adoption of the Stipulated Order as written for review by the State Water Board, and further waive their rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

19. **Covenant Not to Sue:** The Discharger agrees to a covenant not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any Covered Matter.

20. **Central Valley Water Board is Not Liable:** Neither the Central Valley Water Board members nor the Central Valley Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Discharger, their directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.

21. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of and to bind the entity on whose behalf he or she executes the Order.

22. **No Third Party Beneficiaries.** This Stipulated Order is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.

23. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Central Valley Water Board, or its delegee, enters the Order.

24. **Counterpart Signatures:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

IT IS SO STIPULATED.

California Regional Water Quality Control Board Prosecution Staff
Central Valley Region

By: Clay Rodgers
Clay Rodgers
Assistant Executive Officer

Date: 8/4/14

By: George H. Soares - Gloria Soares
George and Gloria Soares, Discharger

Date: 7-24-14

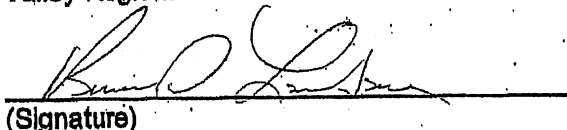
Order of the Central Valley Water Board

1. In adopting this Stipulated Order, the Central Valley Water Board or its delegee has considered, where applicable, each of the factors prescribed in Water Code section 13327. The consideration of these factors is based upon information and comments obtained by the Central Valley Water Board's staff in investigating the allegations in the Complaint or otherwise provided to the Central Valley Water Board or its delegee by the Parties and members of the public.

2. This is an action to enforce the laws and regulations administered by the Central Valley Water Board. The Central Valley Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

3. The terms of the foregoing Stipulation are fully incorporated herein and made part of this Order of the Central Valley Water Board.

Pursuant to Water Code section 13323 and Government Code section 11415.60, IT IS **HEREBY ORDERED** by the California Regional Water Quality Control Board, Central Valley Region.


(Signature)

KENNETH D. LANDAU, ASSISTANT EXECUTIVE OFFICER
(Print Name and Title)

Date: 9 SEPTEMBER 2014

Attachment A – ACL Complaint No. R5-2011-0578
Specific Factors Considered – Civil Liability
Log Haven Dairy (Complaint)

Each factor of the Enforcement Policy and its corresponding score for each violation are presented below:

1. **Violation No. 1. (Failure to submit a Waste Management Plan):** In accordance with the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (General Order) and amended order R5-2009-0029, a Waste Management Plan for regulated facilities must be submitted by 1 July 2010. To date, George H. and Gloria A. Soares (hereinafter Discharger) have not submitted this Plan for the Log Haven Dairy.

Calculation of Penalty for Failure to Submit a Waste Management Plan

Step1. Potential for Harm for Discharge Violations

This step is not applicable because the violation is not a discharge violation.

Step 2. Assessment for Discharge Violations

This step is not applicable because the violation is not a discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations

The per day factor is 0.30.

This factor is determined by a matrix analysis using the potential for harm and the deviation from requirements. The potential for harm was determined to be minor due to the following: The failure to develop and submit a Waste Management Plan does not itself threaten water quality. The deviation from requirements was determined to be major, as the requirement to develop a Waste Management Plan for the operational portions of the Dairy facility has been rendered ineffective. The failure to submit the required Waste Management Plan undermines the Regional Board's efforts to prevent water quality degradation and implement the regulatory protection measures detailed in the General Order.

Initial Liability

A failure to submit a Waste Management Plan is punishable under CWC 13268(b)(1) by civil liability in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs. The Discharger failed to submit a Waste Management Plan by the 1 July 2010 deadline as required by the General Order, which is now 308 days late.

Attachment A – ACL Complaint No. R5-2011-0578

The alternative approach for calculating liability for multiday violations in the Enforcement Policy is applicable. The failure to submit a Waste Management Plan addressing the management of waste does not cause a daily detrimental impact to the environment or the regulatory program and it does not result in an economic benefit that can be measured on a daily basis. It is the extended time period of non-compliance that causes the detrimental impact to both the environment and the regulatory program. The Discharger receives a single economic benefit in cost saved in not developing the report, and not a per-day benefit during the entire period of violation.

Applying the per day factor to the adjusted number of days of violation rounded to the nearest full day equals 16 days of violation. This yields an initial liability of \$4,800 (0.3 per day factor X 16 adjusted days of violation X \$1000 per day penalty).

Step 4. Adjustment Factors

a) *Culpability: 1*

Discussion: The Discharger was given the neutral score of 1, which neither increases nor decreases the fine.

The Discharger is fully responsible for failure to submit a Waste Management Plan alleged in this Complaint. The requirement to develop and submit a Waste Management Plan was detailed in the General Order. Further, the amended Order gave dischargers an extra calendar year to develop and submit the Plan. The Discharger was issued a Notice of Violation on 16 August 2010, which requested that the Plan be submitted as soon as possible to minimize liability. Since that time, the Discharger has failed to show any progress toward developing a Plan, and is therefore highly culpable for their failure to comply with the program.

b) *Cleanup and Cooperation: 1*

Discussion: The Discharger was given the neutral score of 1, which neither increases nor decreases the fine. Despite the fact that the Discharger received multiple notices regarding the requirements set forth in the General Order, the Discharger continues to fail to comply. The violation of CWC section 13268, alleged herein, is a non-discharge violation, and thus cleanup is not applicable.

c) *History of Violations: 1*

Discussion: The Discharger was given the score of 1 which neither increases nor decreases the fine. The Regional Board has no documentation of violations for the Discharger with respect to the failure to submit technical

Attachment A – ACL Complaint No. R5-2011-0578

and/or monitoring reports as required by an order issued pursuant to CWC section 13267(b).

Step 5. Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 3.

- a. *Total Base Liability Amount: \$4,800* (Initial Liability (\$4,800) x Adjustments (1)(1)(1)).

Step 6. Ability to Pay and Continue in Business

- a) *Adjusted Combined Total Base Liability Amount: \$4,800*

Discussion: The Discharger has the ability to pay the total base liability amount based on 1) the Discharger owns the Dairy, a significant asset, 2) the Discharger operates a dairy, an ongoing business that generates profits.

Based on the reasons discussed above, an ability to pay factor of 1 has been applied to the Combined Total Base Liability Amount.

Step 7. Other Factors as Justice May Require

- a) *Adjusted Combined Total Base Liability Amount: \$4,800 + \$1,800 (Staff Costs) = \$6,600.*
- b) *Discussion:* The State and Regional Water Board has incurred \$1,800 in staff costs associated with the investigation and enforcement of the violations alleged herein. This represents approximately 12 hours of staff time devoted to investigating and drafting the complaint at \$150 an hour. In accordance with the Enforcement Policy, this amount is added to the Combined Total Base Liability Amount. A further adjustment of the combined total base liability amount may be made if the Discharger submits a complete Waste Management Plan by **20 June 2011**. The amount of the combined total base liability amount may be reduced by \$2,000 for the completed report that is submitted to the Central Valley Water Board by **20 June 2011**. This reduction in the combined total base liability amount by \$2,000 accounts for enforcement efficiencies gained by the Discharger submitting the completed report.

Step 8. Economic Benefit

- a) *Estimated Economic Benefit: \$5,000*

Attachment A – ACL Complaint No. R5-2011-0578

Discussion: The Discharger has received an economic benefit from the costs saved in not drafting and preparing the annual report and the Waste Management Plan. This is based on the current consulting costs of employing a certified engineer to conduct a site inspection and produce a Waste Management Plan (\$5,000). The adjusted total base liability amount of \$6,600 is more than at least 10% higher than the economic benefit amount (\$5,000) as required by the enforcement policy.

Step 9. Maximum and Minimum Liability Amounts

a) *Minimum Liability Amount: \$5,500*

Discussion: The Enforcement Policy requires that the minimum liability amount imposed not be below the economic benefit plus ten percent. As discussed above, the Regional Water Board Prosecution Team's estimate of the Discharger's economic benefit obtained from the violations cited in this Complaint is \$5,000.

b) *Maximum Liability Amount: \$308,000*

Discussion: The maximum administrative liability amount is the maximum amount allowed by Water Code Section 13367(b)(1): one thousand dollars (\$1,000) for each day in which the violation occurs. Without the benefit of the alternative approach for calculating liability for multiday violations under the Enforcement Policy, the Discharger could face penalties for the total number of days in violation (308 total days X \$1,000 per day).

The proposed liability falls within these maximum and minimum liability amounts.

Step 10. Final Liability Amount

Based on the foregoing analysis, and consistent with the Enforcement Policy, the final liability amount proposed for the failure to submit the 2008 and 2009 Annual Reports, and the Waste Management Plan is **\$6,600**.